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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,

10 Plaintiff,

11 v.

12 Dillyn Anthony Dust,

13 Defendant.
14

No. CR-23-00398-001-TUC-JAS (MSA)

ORDER

15 Defendant Dillyn Dust is charged with various firearm and drug offenses. (Doc. 27.)
16 In March 2023, he was released on conditions over the Government's objection. (Doc. 3.)
17 Seeking to reverse that decision, the Government moves to reopen the detention hearing.
18 (Doc. 29.) The motion, which is opposed, will be granted. (Doc. 33.)

19 A detention hearing may be reopened based on information "that was not known to
20 the movant at the time of the hearing and that has a material bearing on the issue whether
21 there are conditions of release that will reasonably assure the appearance of [the defendant]
22 as required and the safety of any other person and the community." 18 U.S.C. § 3142(f)(2).
23 The Government identifies four bits of new information. First, after Defendant's release,
24 videos of firearms were posted on what appears to be his social media account. Defendant's
25 conditions of release preclude him from possessing firearms. Second, cellphone location
26 monitoring indicates that Defendant visited his grandmother only four times over the three-
27 week period preceding his arrest. That conflicts with the grandmother's sworn testimony
28 that Defendant stayed at her house four nights per week. Third, and relatedly, the

1 grandmother admitted during questioning that she “maybe exaggerated a bit” when she
2 told the Court that Defendant lives with her more than half the time. She also expressed
3 concern about committing perjury. Fourth, a search of Defendant’s cellphone revealed that
4 he had been selling drugs and firearms prior to his arrest.¹

5 The social media posts, the search of the cellphone’s location history and contents,
6 and the interview with Defendant’s grandmother all occurred after Defendant was released,
7 so that information is new. This new information has a material bearing on whether
8 Defendant should be released. Firearm offenses are particularly serious. Defendant is
9 charged with several of them (including one that carries a presumption of detention), and
10 he is not supposed to possess firearms while on release. His alleged failure to follow that
11 condition supports the conclusion that he is a danger to the public and should be detained.
12 His alleged drug sales also support that conclusion. In addition, Defendant’s residency was
13 of concern to the Court before it released him. If his housing status was not as represented
14 at his detention hearing, that raises concerns about his current housing status and whether
15 he is a risk of nonappearance. Accordingly, the Court will reopen the detention hearing.

16 Defendant argues that the information concerning his alleged drug sales is not new.
17 His argument has some force, but the issue need not be resolved.² If the information
18 regarding Defendant’s alleged drug sales were set aside, the Court would still reopen the
19 detention hearing based on the social media posts and the information regarding
20 Defendant’s housing status. Further, under the detention statute, whether information is
21 “new” matters only as to whether the detention hearing should be reopened; the statute

22 ¹ The phone was seized at the time of Defendant’s arrest but was not searched until
23 after he was released.

24 ² The Government asserts that, at the time of Defendant’s arrest, federal agents found
25 guns within a foot of 3.2 pounds of marijuana, 200 grams of codeine, and 117 alprazolam
26 pills. One obvious inference from finding these items together is that Defendant possessed
27 a firearm while engaging in drug sales. Indeed, the magistrate judge who presided over the
28 detention hearing indicated she was aware that Defendant was making money in unlawful
ways: “I’m a little familiar with your case because I’m the judge that signed the warrant so
I think that there have been some other ways that you’ve been acquiring income that we’re
not going to talk about today but that are completely and totally unacceptable, okay?”
(Doc. 14 at 17.) In this context, it is reasonable to conclude that the cellphone search only
confirmed what the Government knew before the detention hearing, i.e., the information is
not new.

1 does not limit the subject matter of a reopened hearing to that new information. Thus, the
2 Government will be free to argue that Defendant's alleged drug sales are a factor that favors
3 detention.

4 Defendant's remaining arguments are not persuasive. As to the social media posts,
5 he concedes the Government has "strong" evidence that the social media account is his.
6 However, he says that because there is no evidence of who made the videos or when the
7 videos were made, the videos do not show that he possessed a firearm after his release.
8 This argument demands too much from the Government at this stage. Right now, the issue
9 is whether the Government has identified new information that has a material bearing on
10 whether Defendant should be released. The videos satisfy that standard: they depict
11 firearms, they were posted after Defendant's release on what appears to be his social media
12 account, and the Government has proffered that Defendant has a history of recording
13 himself with firearms. (*See* Doc. 29 at 1.) It is reasonable to infer, for present purposes,
14 that Defendant made the videos after his release. And there can be no dispute that that is
15 material to whether he should remain released. Whether the new information ultimately
16 warrants detention, however, is a separate issue. The Government must make *that* showing
17 either by a preponderance of the evidence or by clear and convincing evidence. *See United*
18 *States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991) (per curiam) (citing *United States v.*
19 *Motamedi*, 767 F.2d 1403, 1406–07 (9th Cir. 1985)). Defendant's argument is relevant to
20 the second inquiry.

21 As to his housing, Defendant says that whether his grandmother perjured herself to
22 secure his release is "moot" because Pretrial Services has since approved his request to live
23 elsewhere. He also says that this information is not new because, at the detention hearing,
24 the Government identified a conflict between his grandmother's and mother's statements
25 about his housing status. As to Defendant's first point, the Court has already explained that
26 misrepresentations about his prior housing status give rise to concerns about his current
27 housing status. That issue is not moot. As to the second point, at the time of the detention
28 hearing, the Government did not know Defendant's housing status. Now it does. The

1 information is new.

2 **IT IS ORDERED** that the motion to reopen the detention hearing (Doc. 29) is
3 **granted**. A detention hearing is **set** for **August 30, 2023**, at **1:30 p.m.** in Courtroom 5E
4 before the undersigned judge. Defendant must be present for the hearing. Pretrial Services
5 is directed to prepare a release status report in advance of the hearing. The report must
6 include a general update about Defendant's performance under supervision as well as a
7 chronology of his housing situation, including steps taken to verify he is living at the
8 location authorized by Pretrial Services.

9 Dated this 23rd day of August, 2023.

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11 Honorable Maria S. Aguilera
12 United States Magistrate Judge
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